

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

JEREMIAH RIORDAN

Plaintiff(s),

-against-

THE ROMAN CATHOLIC ARCHDIOCESE OF NEW YORK
AND PETER KIHM

Defendant(s).

Index No.

Summons

Date Index No. Purchased:

To the above named Defendant(s)

Archdiocese of New York, 1101 First Avenue, New York, NY 10022
Peter Kihm, 3253 Huntington Woods Drive SE, Apt. G, Grand Rapids, MI 49512

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is Defendants' principal place of business,
which is in New York County

Dated: August 15, 2019

Seeger Weiss LLP

by

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SUPREME COURT OF THE STATE OF NEW YORK
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JEREMIAH RIORDAN,

Index No. _____

Plaintiff,

-against-

COMPLAINT

THE ROMAN CATHOLIC ARCHDIOCESE
OF NEW YORK, and PETER KIHM

JURY TRIAL DEMANDED

Defendants.

Plaintiff, Jeremiah Riordan, by and through the undersigned attorneys, complains of Defendants, The Roman Catholic Archdiocese of New York and Peter Kihm, and alleges on personal knowledge as to himself and on information and belief as to all other matters, as follows:

PARTIES

1. Plaintiff Jeremiah Riordan is a forty-seven year old resident of New York. Plaintiff was approximately nine to ten years old at the time of the sexual abuse alleged herein.

2. Defendant The Roman Catholic Archdiocese of New York ("New York Archdiocese") was and continues to be an organization or entity which includes, but is not limited to, civil corporations, decision making entities, officials and employees authorized to conduct business in the State of New York with its principal place of business at 1101 First Avenue, New York, New York 10022, in New York County, New York.

3. Defendant Peter Kihm currently resides and may be served with process at 3253 Huntington Woods Drive SE, Apt. G, Grand Rapids, Michigan 49512 or wherever he may be found.

JURISDICTION AND VENUE

4. This Court has personal jurisdiction over the Defendants pursuant to CPLR §§301 and 302, because Plaintiff's claims arise from the tortious acts of Defendants that were committed in the State of New York.

5. The Court has jurisdiction over this action because the amount of damages Plaintiff seeks exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction.

6. Venue is proper in the County of New York under CPLR §503 because at least one of the parties to this suit reside in this county at the time this suit was commenced and all or a substantial part of the events or omissions giving rise to this cause of action occurred in New York County, New York.

7. The federal courts lack jurisdiction over this suit. Plaintiff's claim raises no federal question nor does Plaintiff seek relief under a federal law, statute, regulation, treaty, or the United States Constitution. Accordingly, Plaintiff's right to relief does not depend on the resolution of a substantial question of federal law. Further, this lawsuit cannot be removed because there is no complete diversity, as at least one Defendant resides or has their principal place of business in New York. Therefore, removal would be improper.

FACTS

8. Defendant Peter Kihm was ordained a Roman Catholic priest in 1981 and from 1981-1984 served at the direction of Defendant New York Archdiocese at St. Mary Star of the Sea Church, 596 City Island Ave, Bronx, New York 10464.

9. Beginning around 1981, when Plaintiff Riordan was in the 4th grade, he became an altar boy at the church. His duties as an altar boy meant that he spent many hours alone with Defendant Kihm at the church. It was during these times that Defendant Kihm would sexually

assault Plaintiff Riordan by fondling Plaintiff Riordan's genitals. On other multiple occasions, Kihm molested Plaintiff in the church's rectory, fondling Plaintiff's genitals while he was forced to sit next to Kihm.

10. This sexual assault would occur multiple times until Defendant Kihm left St. Mary Star of the Sea Church in 1984.

11. In approximately 2015, after multiple credible reports of sexual assault of minor children, Defendant New York Archdiocese suspended Defendant Kihm from the ministry.

12. In 2016, Defendant Kihm was laicized, thereby departing the Catholic priesthood.

13. Defendant Kihm was included on a list of Archdiocesan clergy who had been the subject of credible sex abuse complaints released by the New York Archdiocese on April 26, 2019.

14. Defendant New York Archdiocese continues to conceal important information about the priests on that list and the names and information about accused priests not publicly disclosed. Additional information has also not been disclosed about the credibly accused priests' patterns of grooming and sexual abuse.

15. As a direct result of the Defendants' conduct described herein, Plaintiff suffered and will continue to suffer great, permanent harm, including but not limited to severe emotional distress, humiliation, embarrassment and loss of self-esteem.

16. Plaintiff has also suffered a severe disruption of his enjoyment of life, as well as his relationships with family, fellow Catholics, and others. His religious faith, together with its fellowship and other benefits, has been destroyed.

17. The trauma suffered by Plaintiff has resulted in chronic mental health issues, drug addiction and alcoholism, all of which have required and/or will require counseling and other treatment.

CAUSES OF ACTION AGAISNT DEFENDANT PETER KIHM**A. ASSAULT**

18. Plaintiff incorporates each and every allegation set forth in paragraphs 8 through 17 as if fully set forth herein.

19. Defendant Kihm's abuse of Plaintiff placed Plaintiff in imminent apprehension of harmful contact, was committed intentionally and in wanton disregard for the health and/or safety of Plaintiff, and is a tortious assault under the law of New York,.

20. This assault was a proximate cause of the harms and damages to Plaintiff.

B. BATTERY

21. Plaintiff incorporates each and every allegation set forth in paragraphs 8 through 20 as if fully set forth herein.

22. Defendant Kihm's uninvited and offensive touching of Plaintiff was a battery upon Plaintiff and a violation of Plaintiff's body and done intentionally in wanton disregard for the health and/or safety of Plaintiff.

23. This battery was a proximate cause of the harms and damages to Plaintiff.

C. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

24. Plaintiff incorporates each and every allegation set forth in paragraphs 8 through 23 as if fully set forth herein.

25. Defendant Kihm's conduct toward Plaintiff was extreme and outrageous. The damage that such conduct would cause Plaintiff was intended by Defendant Kihm, or Defendant Kihm disregarded a substantial likelihood of the damage such conduct caused.

26. As a foreseeable, direct, and proximate result of Defendant Kihm's actions, Plaintiff suffered severe emotional distress.

CAUSES OF ACTION AGAINST DEFENDANT NEW YORK ARCHDIOCESE**A. VICARIOUS LIABILITY/*RESPONDEAT SUPERIOR***

27. Plaintiff incorporates each and every allegation set forth in paragraphs 8 through 26 as if fully set forth herein.

28. Plaintiff affirmatively pleads that any alleged tortious acts of Defendant Kihm were committed while he was acting in the course and scope of his employment with Defendant New York Archdiocese, or while he were acting as an agent or on behalf of Defendant New York Archdiocese, and are thus imputed to Defendant New York Archdiocese under a legal theory of *respondeat superior*.

B. NEGLIGENCE

29. Plaintiff incorporates each and every allegation set forth in paragraphs 8 through 28 as if fully set forth herein.

30. Defendant New York Archdiocese held itself out to be safe places for religious worship, spiritual development and growth, learning and education, or engaging in youth and/or community activities. Defendant New York Archdiocese had, adopted, and/or assumed an express and/or implied duty to provide a reasonably safe environment for Plaintiff and assumed the duty to protect and care for him.

31. Defendant New York Archdiocese owed a duty of care to all minor persons, including Plaintiff, who were likely to come within the influence or supervision of Defendant Kihm, in their role as teacher, priest, counselor, trustee, director, officer, employee, agent, servant and/or volunteer.

32. Defendant New York Archdiocese breached their duties of care in one or more of the following ways:

- a. Negligently hiring Defendant Kihm as they knew or should have known that he posed a threat of sexual abuse to children;
- b. Negligently retaining Defendant Kihm as they knew or should have known that he posed a threat of sexual abuse to children;
- c. Negligently directing Defendant Kihm as they knew or should have known that he posed a threat of sexual abuse to children;
- d. Negligently supervising Defendant Kihm as they knew or should have known that he posed a threat of sexual abuse to children;
- e. Failing to investigate the background of Defendant Kihm before placing them into close contact with Plaintiff;
- f. "Covering up" or otherwise failing to disclose the harmful acts of Defendant Kihm;
- g. Failing to warn Plaintiff, his parents and/or legal guardians of Defendant Kihm's conduct despite having constructive knowledge of sexual abuse;
- h. Failing to warn Plaintiff, his parents and/or guardians of Defendant Kihm's conduct despite having actual knowledge of sexual abuse;
- i. Assigning or allowing Defendant Kihm to have contact with Plaintiff despite having constructive and/or actual knowledge of sexual abuse;
- j. Minimizing, ignoring or excusing priestly misconduct over a period of decades;
- k. Failing to provide a safe environment to children and other parishoners within the churches, sacristies, schools and rectories operated and/or owned by the Archdiocese;
- l. Failing to train priests and Archdiocesan employees to identify signs of child molestation by fellow employees;
- m. Failing to implement and maintain effective policies and procedures to prevent sexual abuse and abuse of children;
- n. Failing to investigate complaints of abuse properly;
- o. Failing to report Defendant Kihm's sexual abuse to appropriate law enforcement agencies; and
- p. Failing to exercise due care under the circumstances.

33. As a foreseeable, direct, and proximate result of Defendant New York Archdiocese's negligence, Plaintiff has suffered and will continue to suffer the injuries described herein.

C. GROSS NEGLIGENCE

34. Plaintiff incorporates each and every allegation set forth in paragraphs 8 through 33 as if fully set forth herein.

35. Defendant New York Archdiocese's acts and omissions, as previously described, were committed with complete and reckless disregard for, and with willful, wanton, and actual conscious indifference to, the rights, safety, and welfare of Plaintiff and the general public. The nature of Defendant New York Archdiocese's acts and omissions were of such a nature as to constitute gross negligence and malice. Specifically, Defendant New York Archdiocese's undertook a continuous course of action in the form of conscious decisions, with subjective knowledge and awareness of the risks and hazards presented by each decision as discussed above and incorporated herein, to expose Plaintiff and others to sexual abuse and/or sexual assault, and exercised not even slight care or diligence. When viewed objectively from the standpoint of Defendant New York Archdiocese at the time of their occurrence, said acts and omissions involved reckless disregard of or indifference to an extreme degree of physical, mental, and psychological risk and danger, considering the probability and the magnitude of the potential harm to others. Defendant New York Archdiocese committed various acts and omissions constituting gross negligence, as outlined above. Such gross negligence was a proximate cause of the occurrence and Plaintiff's injuries and damages.

D. BREACH OF FIDUCIARY DUTY

36. Plaintiff incorporates each and every allegation set forth in paragraphs 8 through 35 as if fully set forth herein.

37. There is a fiduciary relationship between Plaintiff and Defendant New York Archdiocese. This relationship is based on the fact that Plaintiff trusted his physical, mental, psychological, and spiritual care to the priests, officers, directors, officials, employees, volunteers, servants, and/or all those acting as agents of Defendant New York Archdiocese or on their behalf, who held themselves out as beholden to a spiritual and interpersonal duty to provide advice, benefit, and guidance to Plaintiff.

38. Because of this fiduciary relationship, Defendant New York Archdiocese was required and had a duty to act in the best interests of Plaintiff and to protect him while he was a minor child.

39. Defendant New York Archdiocese breached its fiduciary duty to Plaintiff.

40. As a foreseeable, direct, and proximate result of Defendant New York Archdiocese's breach of fiduciary duty, Plaintiff has suffered and will continue to suffer the injuries described herein.

E. BREACH OF NON-DELEGABLE DUTY

41. Plaintiff incorporates each and every allegation set forth in paragraphs 8 through 40 as if fully set forth herein.

42. When Plaintiff was a minor, he was placed into the care of Defendant New York Archdiocese for the purpose of providing Plaintiff with a safe environment in which to receive and education and/or participate in religious worship, spiritual development, and community service. Because Defendant New York Archdiocese was entrusted with the care of Plaintiff while he was

a minor child, there existed a non-delegable duty of care that went from Defendant New York Archdiocese to Plaintiff.

43. Since Plaintiff was a minor child at the time, Defendant New York Archdiocese was in the best position to prevent the abuse that Plaintiff suffered at the hands of Defendant Kihm, and/or stop such abuse when they learned of it.

44. Defendant New York Archdiocese failed to prevent the abuse and harm Plaintiff suffered, and/or they failed to stop it once they were aware of or should have been aware of the abuse. This failure was a breach of Defendant New York Archdiocese's non-delegable duty to Plaintiff.

45. As a foreseeable, direct, and proximate result of this breach, Plaintiff suffered significant injuries and long-lasting damages.

F. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

46. Plaintiff incorporates each and every allegation set forth in paragraphs 8 through 45 as if fully set forth herein.

47. As described in Sections B-E, Defendant New York Archdiocese owed Plaintiff various duties, which Defendant New York Archdiocese negligently breached. Defendant New York Archdiocese's negligence unreasonably endangered Plaintiff and caused him to fear for his own safety.

48. As a foreseeable, direct, and proximate result of Defendant New York Archdiocese's negligence, Plaintiff suffered severe injuries, including but not limited to mental and emotional distress.

G. BREACH OF DUTY *IN LOCO PARENTIS*

49. Plaintiff incorporates each and every allegation set forth in paragraphs 8 through 48 as if fully set forth herein.

50. While he was a minor, Plaintiff was entrusted by his parents to the control of Defendant New York Archdiocese for the purpose of providing Plaintiff an education and spiritual development.

51. During the times that Plaintiff was at Defendant New York Archdiocese, he was under the control and supervision of Defendant New York Archdiocese. These Defendants owed a duty to Plaintiff to act in loco parentis and to prevent foreseeable injuries.

52. Defendant New York Archdiocese breached their duty to act in loco parentis. As a foreseeable, direct, and proximate result of their breach of duty, Plaintiff suffered injuries.

H. FRAUDULENT CONCEALMENT

53. Plaintiff incorporates each and every allegation set forth in paragraphs 8 through 52 as if fully set forth herein.

54. For many years after Plaintiff's abuse at the hands of Defendant Kihm, Defendant New York Archdiocese engaged in a conscious, deliberate plan to conceal the abuse, including but not limited to:

- a. Concealing from the public the sexual abuse committed by Defendant Kihm;
- b. Concealing the identities of Defendant Kihm;
- c. Concealing from appropriate law enforcement officials the sexual abuse committed by Defendant Kihm against Plaintiff and/or other minors;
- d. Attacking the credibility of Plaintiff and/or other victims of Defendant Kihm; and
- e. Impeding or otherwise preventing Plaintiff and other victims from pursuing legal action against Defendant Kihm.

55. Defendant New York Archdiocese had a duty to disclose the information it concealed in Paragraph 54, and its concealment therefore amounted to a misrepresentation.

56. Defendant New York Archdiocese concealed this information with fraudulent intent, with the goal of inducing reliance.

57. Plaintiff, and others, justifiably relied upon Defendant New York Archdiocese's concealment of this material information.

58. As a foreseeable, direct, and proximate result of Defendant New York Archdiocese's concealment, Plaintiff suffered significant injuries.

DAMAGES

59. Plaintiff seeks compensation for the following damages that resulted from this incident:

- a. Past mental anguish of Plaintiff, and that he will, in all probability, suffer in the future;
- b. Past physical pain and suffering of Plaintiff, and that he will, in all probability, suffer in the future;
- c. The medical expenses that Plaintiff has incurred in the past and will, in all probability continue to incur in the future;
- d. Past and future lost wages;
- e. Loss of earning capacity;
- f. Cost of suit;
- g. Reasonable and necessary attorney's fees;
- h. Punitive damages;
- i. Exemplary damages; and
- j. Any and all other damages to which Plaintiff may be justly entitled.

PRESERVATION OF EVIDENCE

60. Plaintiff hereby requests and demand that Defendants preserve and maintain all evidence pertaining to any claim or defense related to the incident made the basis of this lawsuit, or the damages resulting therefrom, including photographs; videotapes, audiotapes; recordings; business records; medical records; billing records; estimates; invoices; checks; correspondence; memoranda; files; facsimiles; emails; voice mail; text messages; investigations; cellular telephone records; calendar entries; and any electronic image, data, or information related to Plaintiff(s), the references incident, or any damages resulting therefrom. Failure to maintain such items will constitute spoliation of the evidence.

JURY DEMAND

61. Plaintiff demands a trial by jury on all issues so triable.

PRAYER FOR RELIEF

WHEREFORE Plaintiff prays that Defendants be cited in terms of law to appear and answer herein, that upon final trial and hearing hereof, that Plaintiff recovers damages from Defendants in accordance with the evidence; that Plaintiff recovers costs of court herein expended; that Plaintiff recovers interest to which Plaintiff is justly entitled under law, both prejudgment and post-judgment; that Plaintiff recovers actual damages; that Plaintiff is entitled to recover compensatory damages; that Plaintiff recovers punitive damages; and for such other further relief; both general and special, both in law and in equity, to which Plaintiff may be justly entitled.

Respectfully submitted,



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